



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

G.R. No. 196960

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

ERWIN TAMAYO y BAUTISTA,
Appellant.

Promulgated:

March 12, 2014

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DECISION

ABAD, J.:

The City Prosecutor of Manila originally filed separate charges of homicide and theft of a necklace worth ₱1,500.00 against accused Erwin Tamayo y Bautista (Erwin) and John Del Rosario (John) before the Regional Trial Court (RTC) of Manila in Criminal Cases 04-225922-23. Subsequently, however, the prosecution amended the charge of homicide to one of murder, qualified by taking advantage of superior strength and employing means to weaken the defense and afford impunity. It also claimed the attendance of the aggravating circumstances of treachery and evident premeditation.¹ Trial took place only as to Erwin since John jumped bail and remained at-large.²

The prosecution presented Norman Pleno (Norman), Wilson Quinto (Wilson), Alvin Hernaez (Alvin), and Leonard Miranda (Leonard). They testified that in the early morning of April 8, 2004, while Joey M. Obamen (Joey), Wilson, Alvin, and Lorenzo Gloria (Lorenzo) were having drink and merriment beside the *Iglesia Ni Cristo* (INC) chapel on Lacson Street in

¹ Records, p. 140.

² Id. at 159.

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Tondo, Manila,³ someone hurled empty bottles of gin at them.⁴ As Wilson went to look for whoever had done it, he saw accused Erwin and John, in the company of several others, also having their drink.⁵

Retaliating, Joey and his group threw stones and empty gin bottles at accused Erwin and his companions.⁶ Enraged, the latter group gave chase to Joey and the others with him. Unfortunately, Joey tripped on an iron chain that guarded the INC's parking area and fell to the ground.⁷ He was in this position when Erwin and his companions attacked and mauled him. Some, including Erwin, stabbed Joey with their knives. The assailants scampered away afterwards.⁸

Joey was rushed to the Jose Reyes Memorial Hospital but died shortly on arrival.⁹ A subsequent autopsy of his body showed that he died of traumatic injuries on the head and multiple stab wounds on the abdomen.¹⁰

In his defense, Erwin claimed that when the killing took place, he was asleep at home with his wife and a certain Maricel Bustarde although it would take but about 20 to 25 minutes to walk from his house to where the incident took place.¹¹ He also claimed that he and Norman, his wife's former boyfriend and one of the prosecution witnesses, had an altercation shortly before the killing incident.¹² This was the reason Norman testified falsely against him.¹³

On November 21, 2008 the RTC found accused Erwin guilty of murder but innocent of the separate charge of theft.¹⁴ Although it did not find sufficient evidence of treachery, evident premeditation, or employment of means to weaken the defense and afford impunity, the RTC elevated the crime that Erwin committed from homicide to murder based on its finding that abuse of superior strength attended the killing. The RTC sentenced him to suffer the penalty of *reclusion perpetua* and to pay Joey's heirs ₱50,000.00 as civil indemnity, ₱36,981.85 as actual damages, and ₱50,000.00 as moral damages.¹⁵ Erwin appealed the conviction.¹⁶

³ TSN, August 30, 2005, pp. 5-6; TSN, May 8, 2006, p. 5.

⁴ Id. at 7; TSN, October 4, 2005, p. 3; TSN, November 29, 2005, pp. 2-3.

⁵ Id. at 7-9.

⁶ TSN, November 25, 2005, p. 4.

⁷ TSN, May 8, 2006, pp. 4, 8-9.

⁸ TSN, August 30, 2005, pp. 13-16.

⁹ Id. at 17.

¹⁰ Records, p. 91.

¹¹ TSN, October 8, 2007, pp. 3-4; TSN, February 26, 2008, pp. 5-6.

¹² Id. at 3.

¹³ CA *rollo*, p. 71.

¹⁴ Id. at 34; penned by Judge Socorro B. Inting.

¹⁵ Id. at 33-34.

¹⁶ Id. at 36.

On November 19, 2010 the Court of Appeals (CA) affirmed the RTC Decision with modification in that it further ordered Erwin to pay Joey's heirs ₱30,000.00 as exemplary damages,¹⁷ hence, the appeal to this Court.¹⁸

Accused Erwin claims that since about 15 men mauled Joey, it is "highly possible" that the prosecution witnesses made a mistake in saying that it was he who caused Joey's death.¹⁹ Erwin cites several variances in the testimonies of the prosecution witnesses that lend credit to his defense that he was elsewhere when the incident took place.²⁰ He also insists that Norman's testimony cannot be believed for being tainted with ill motives. Lastly, Erwin contends that the CA and the RTC erred in finding that abuse of superior strength qualified the killing of Joey to murder.²¹

But the Court has always been inclined, with few exceptions, to defer to the findings of fact of the trial court since it had the opportunity to observe how each witness expressed himself and whether his eyes agreed with his lips. The Court finds nothing from the transcripts that would indicate that the trial court and the CA misapprehended the facts.

The Court also finds no error in the RTC and the CA's rejection of his alibi. The site of the murder was not far from where he lived. Besides, he presented no corroborating testimony that he was then at his house. As to his lament that the RTC and the CA should not have given credit to Norman's testimony for he had a grudge against him, Erwin presented no proof apart from his word that this was so. At any rate, the accounts of the remaining eyewitnesses were just as positive, straightforward, consistent, and clear. They all testified that Erwin stabbed Joey with a knife.

Assuming that the prosecution witnesses failed to identify exactly who inflicted the fatal wounds on Joey during the commotion, Erwin's liability is not diminished since he and the others with him acted with concert in beating up and ultimately killing Joey. Conspiracy makes all the assailants equally liable as co-principals by direct participation.²²

Since about 15 men, including accused Erwin, pounced on their one helpless victim, relentlessly bludgeoned him on the head, and stabbed him on the stomach until he was dead, there is no question that the accused took advantage of their superior strength.

¹⁷ *Rollo*, pp. 2-12; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Japar B. Dimaampao and Rodil V. Zalameda.

¹⁸ *Id.* at 13.

¹⁹ *CA rollo*, p. 64.

²⁰ *Id.* at 64-69.

²¹ *Id.* at 69-71.


²² *People v. Villarico, Sr.*, G.R. No. 158362, April 4, 2011, 647 SCRA 43, 59, citing *People v. Ronquillo*, 430 Phil. 32, 50 (2002).

In disposing the civil aspect of the case, the RTC correctly awarded to Joey's heirs the amount of ₱36,981.85 as actual damages representing medical and funeral expenses²³ as this amount was adequately supported by the receipts.²⁴ In addition, this Court sustains the award of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages given to Joey's heirs for being in accord with established jurisprudence.²⁵


With regard to the penalty, Article 248 of the Revised Penal Code, as amended by Republic Act 9346,²⁶ imposes the penalty of *reclusion perpetua*²⁷ to death for the crime of murder. In this case, the RTC correctly imposed²⁸ *reclusion perpetua* as the penalty for murder due to absence of any modifying circumstance.²⁹

WHEREFORE, the Court **AFFIRMS** *in toto* the Decision of the Court of Appeals in CA-G.R. CR-H.C. 03851 dated November 19, 2010 which affirmed with modification as to damages the Decision of the Regional Trial Court in Criminal Cases 04-225922-23 dated November 21, 2008.

SO ORDERED.


ROBERTO A. ABAD
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

²³ Records, pp. 289-292.

²⁴ See: Chapter 2, Title XVII, Book IV of the Civil Code of the Philippines.

²⁵ *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, 611 SCRA 633, 647.

²⁶ An Act Prohibiting the Imposition of Death Penalty in the Philippines.

²⁷ As amended by Republic Act 9346.

²⁸ See: Republic Act 9346; Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act 4180, otherwise known as the Indeterminate Sentence Law, as amended.

²⁹ *People v. Gutierrez*, supra note 25, at 645.



DIOSDADO M. PERALTA
Associate Justice




JOSE CATRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

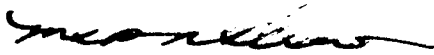
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice